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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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KENNETH HAMILTON,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER  
GENERAL, UNITED STATES POSTAL  
SERVICE,

Defendant.

**MEMORANDUM DECISION AND  
ORDER**

Case No: 1:18-cv-00010-DB-PMW

District Judge Dee Benson

Magistrate Judge Paul M. Warner

Before the court is Defendant's Motion for Summary Judgment on All Claims. (Dkt. No. 21.) The motion has been fully briefed by the parties, and the court has considered the facts and arguments set forth in those filings. Having considered the filings, and being otherwise fully informed, the court enters the following Memorandum Decision and Order.

**BACKGROUND**

This matter concerns Plaintiff Kenneth Hamilton's former employment with the United States Postal Service ("Defendant" or "USPS"). Mr. Hamilton alleges six causes of action against the USPS in his Amended Complaint: (1) gender discrimination in violation of Title VII ("Count I"); (2) age discrimination in violation of the Age Discrimination in Employment Act (ADEA) ("Count II"); (3) disability discrimination in violation of the Vocational Rehabilitation Act ("Count III"); (4) retaliation for protected activity under Title VII ("Count IV"); (5) retaliation for protected activity under the ADEA ("Count V"); and (6) retaliation for protected activity under the Vocational Rehabilitation Act ("Count VI"). (Dkt. No. 11 ¶¶ 34–84.) Defendant's motion seeks summary judgment on all six causes of action. (Dkt. No. 21.)

## **DISCUSSION**

Federal Rule of Civil Procedure 56 permits the entry of summary judgment in matters where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party seeking summary judgment has the burden of showing “that there is no genuine issue of material fact,” and the court must “construe all facts, and reasonable inferences therefrom, in favor of the non-moving party.” *WKB Enters., Inc. v. Ruan Leasing Co.*, 838 F. Supp. 529, 532 (D. Utah 1993). “For purposes of summary judgment, ... the court examines the evidence to determine if a reasonable jury could return a verdict in favor of the nonmoving party. If it can, summary judgment should be denied.” *Id.*

In this case, Mr. Hamilton does not dispute the USPS’ argument that Defendant is entitled to summary judgment on any claims that Mr. Hamilton failed to properly administratively exhaust. (Dkt. No. 24 at 19.) Summary judgment is thereby proper for Mr. Hamilton’s 2015 claim (EEO claim 43-840-0072-15), which was not administratively exhausted. In addition, Mr. Hamilton has failed to offer evidence that the USPS was aware that Mr. Hamilton had any disability at the time of the alleged adverse employment actions. Summary judgment is thereby also appropriate for Mr. Hamilton’s disability claims alleged in Counts III and VI.

However, summary judgment is not appropriate for Mr. Hamilton’s discrimination and retaliation claims related to age and gender, which Mr. Hamilton alleged in Counts I, II, IV, and V. Mr. Hamilton has established prima facie cases of discrimination and retaliation by the USPS in violation of Title VII and the ADEA. Mr. Hamilton then provided sufficient circumstantial evidence of disparate treatment to support a genuine issue of material fact as to whether the USPS’ justifications for its adverse actions towards Mr. Hamilton were pretextual. Viewing this

evidence in the light most favorable to Mr. Hamilton, the court finds that a reasonable jury could return a verdict in Mr. Hamilton's favor for his discrimination and retaliation claims under Title VII and the ADEA. *See Bryant v. Farmers Ins. Exch.*, 432 F.3d 1114, 1125 (10th Cir. 2005) (“[O]nce a plaintiff presents evidence sufficient to create a genuine factual dispute regarding the veracity of a defendant's nondiscriminatory reason, we presume the jury could infer that the employer acted for a discriminatory reason and must deny summary judgment.”).

### **CONCLUSION**

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby GRANTED as to Mr. Hamilton's disability claims (Counts III and VI), and the 2015 claim which Mr. Hamilton failed to exhaust (EEO claim 4E-840-0072-15). Defendant's Motion for Summary Judgment is DENIED as to all other claims alleged by Mr. Hamilton.

DATED this 3<sup>rd</sup> day of December, 2019.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Dee Benson  
United States District Judge